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Supreme Court of the United States

OCTOBER TERM 1931—No. 811

GENERAL IMPORT & EXPORT COMPANY, LTD.,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

BRIEF ON BEHALF OF PETITIONER

LOUIS HALLE,
Attorney for Petitioner.

LOUIS HALLE,
MILTON R. KROOPF,
on the Brief.

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Opinions Below.

The opinion of the District Court is reported in 47 Fed. (2d) 336. That of the Circuit Court of Appeals has not yet been reported, but appears in the Record (R. 42). The decree of the Circuit Court of Appeals was filed March 9th, 1932. The petition for certiorari was filed on March 21st, 1932, and the order allowing certiorari was filed March 28th, 1932.

Jurisdiction.

The jurisdiction of this Court is invoked under section 248 of the Judicial Code, as amended by the Act of February 13, 1925.

Statutes Involved.

Section 26, Title II of the National Prohibition Act, Paragraphs 801 and 813 of Schedule 8 and Sections 431, 581, 583, 584 and 594 of the Tariff Act of 1922, are printed in the Appendix.

Specification of Error to be Urged.

The Circuit Court of Appeals erred in holding that a vessel discovered in the act of transporting intoxicating liquors within the territorial waters of the United States may be proceeded against by libel under the Tariff Act of 1922, sections 431, 581, 583, 584 and 594.

Question Presented.

The question presented is whether a vessel seized by customs officers while illegally transporting a cargo of intoxicating liquors within the territorial waters of the United States must be proceeded against by the government only as provided in section 26, Title II of the National Prohibition Act or whether in lieu of so proceeding, the United States may libel the vessel under the Tariff Act of 1922, sections 431, 581, 583, 584 and 594 thereof.

Facts.

The *Sebastopol* is a British vessel. The petitioner, General Import & Export Co., Ltd., is the owner of said vessel. On August 11th, 1927, she was observed by the Coast Guard at a point in New York Harbor. She appeared suspicious and the vessel was signalled to stop (R. 19). The vessel was then boarded and the ship's manifest demanded. It was laden with a cargo of liquor and when first sighted the *Sebastopol* was a quarter of a mile away from shore (R. 11). She was equipped with numerous name plates other than her own, such as *Westmoreland*, and *Mary Emily*. The liquor contained one-half of one percent of alcohol by volume and was fit for beverage purposes (R. 15). Immediately on boarding the vessel, the

Coast Guard observed an open case of liquor in the pilot house (R. 17). No manifest was produced. The men were arrested and charged with a violation of the National Prohibition Act (R. 19). 4,841 cases of liquor were found aboard. The *Sebastopol* was appraised at $7,500 and the value of the cargo was fixed at $48,410 (R. 20).

POINT I.

Section 26, Title II of the National Prohibition Act is the exclusive statute under which the United States may proceed against the vessel, and it was error of the Circuit Court of Appeals to sustain the libel under the Tariff Act of 1922, Sections 431, 581, 583, 584 and 594.

It is respectfully urged that the decision of this Court in

Richbourg Motor Co. v. *United States*, 281 U. S. 528, 74 L. Ed. 1016

is determinative of the question involved. The pertinent language of that decision reads as follows:

> "But the prescription in detail, by section 26, *whenever transportation is involved*, of successive steps to be taken, which, if followed, lead unavoidably to forfeiture *under that section and no other*, with the important consequence of protecting the interests of innocent third persons, suggests a definite purpose to make the protection effective by bringing all forfeitures in such cases under its controlling provisions. If the purpose were the more general one of imposing on government officers the general duty to procure the forfeiture at their elec-

> tion, either under section 26 *or any other applicable statute,* most of the requirements of section 26 might have been omitted. The end sought could have been attained more easily by the simple enactment, in the language of section 3450, that the offending vehicle 'shall be forfeited,' saving the rights of innocent lienors if the proceeding were had under section 26." (Italics ours.)

As this Honorable Court has held, the provisions of section 26 are mandatory. Its language is rendered no less mandatory when the sections of the Tariff Act are invoked. Unless a provision of law exists which in its terms are at least equally mandatory as those of section 26 and specifically refer to section 26, and by the terms of such section the Congress expresses an intent to supersede the mandatory provisions of section 26, then its language is controlling. The Tariff Act sections invoked in the present case are not mandatory and do not refer in any way to the provisions of section 26 which would render section 26 unavailable. Nor do we know of any provision of law at the present time which does vitiate the force and effect of section 26 under a fact situation which brings it within the terms thereof.

The Circuit Court of Appeals in its opinion erred in holding that there is no direct conflict between sections 481, 581, 583, 584 and 594 of the Tariff Act of 1922 and section 26 of the National Prohibition Act. The Court in its opinion states,

> "It may well be argued that a proceeding to enforce a lien under the Tariff Act is not in direct conflict with the proceeding to forfeit the vessel contemplated by section 26."

It is to be noted that section 26 of the National Prohibition Act is effective as against guilty owners and guilty lienors. As to their interests, and only to such extent, is the *res* penalized. Under the Tariff Act provisions in question the *res* is penalized to the extent of the penalty imposed upon the master. Thus the *res* is bound to that extent *irrespective of the innocence of the owner.* Such penalties are necessarily in conflict. It would seem therefore that the Circuit Court of Appeals was in error in holding

> "* * * we are disposed to say that no direct conflict appears when only the lien of a penalty is being enforced."

for the reason that section 26 of the National Prohibition Act results only in imposing penalties against the *res* as to each guilty lienor or owner. Both by section 594 of the Tariff Act of 1922 and by section 26 of the National Prohibition Act the vessel is held for the payment of the penalty against the master on one hand and against guilty lienors or owners on the other hand, the measure of liability being the extent of such interests.

Section 594 of the Tariff Act of 1922 provides *inter al.:*

> "Such vessel or vehicle shall be held for the payment of such penalty."

Section 26 of the National Prohibition Act provides that the Court upon conviction of the person arrested in transportation shall

> "Order a sale by public auction of the property seized, * * * shall pay all liens according to their priorities, which are established, * * * as being

> bona fide * * *, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts."

Where transportation is involved section 594 of the Tariff Act of 1922 is therefore necessarily in direct conflict with section 26, by parity of reasoning with the following authorities:

> *United States* v. *One Ford Coupe Automobile*, 272 U. S. 321, 71 L. Ed. 279;
> *Richbourg Motor Co.* v. *United States*, *supra*.

The Circuit Court of Appeals further erred in holding that if there is a direct conflict between the Tariff Act provisions and section 26 of the National Prohibition Act, that the former being enacted later in time, supersedes the National Prohibition Act. It has already been urged that provisions as mandatory as those contained in section 26 dealing specifically with the transportation of intoxicating liquors, cannot be construed to be superseded by virtue of the later *general enactment*.

It is well settled that an earlier specific statute is considered an exception to a later general statute broad enough in terms to include the subject-matter of the former. As stated in

> *Simon* v. *Simon*, 26 Fed. (2d) 530,

at page 532:

> "It is a canon of statutory construction that, where there is an earlier special statute and a later general statute, the terms of the later being broad enough to include the matter provided for in the former, the special statute must be considered as

an exception to the general statute. Ex parte Crow Dog, 109 U. S. 556, 570, 3 S. Ct. 396, 27 L. Ed. 1030; Rodgers v. United States, 185 U. S. 83, 87, 88, 89, 22 S. Ct. 582, 46 L. Ed. 816."

The Circuit Court of Appeals therefore erred in stating:

> "Therefore, notwithstanding the above-mentioned canon of interpretation and despite the statement in Paragraph 801 of the schedule that nothing in this schedule shall be construed as limiting or restricting the provisions of the National Prohibition Act, we cannot interpret sections 584 and 594 otherwise than as applying specifically to an unmanifested cargo of intoxicating liquor and as superseding pro tanto the earlier enacted section 26 if a conflict exists."

It must be noted that Paragraph 813 of Schedule 8 declares forfeit

> "any such wines, spirits or other liquors or articles imported or brought into the United States without a permit."

As to such wines, spirits, etc., it provides that the same

> "shall be seized and forfeited in the same manner as for other violations of the customs laws."

Forfeiture is declared in Paragraph 813 of Schedule 8 itself. The procedure to the end that the forfeiture therein provided for may be accomplished follows

> "in the same manner as for other violations of the customs laws." (Paragraph 813, Schedule 8.)

It is to be noted that there is no mention made in this Paragraph (813 of Schedule 8), which is the backbone of the Circuit Court's decision, concerning the vehicle in which "such wines, spirits or other liquors or articles" are imported, and furthermore the Paragraph is silent as to the person of the offender. It is entirely limited to the merchandise itself and as to it, declares it forfeit and empowers to that end the procedural steps under the customs law as for other violations thereof. The Congress was not unaware of this limitation in Paragraph 813, as the liquor referred to in that Paragraph was only such liquor as was actually within the territorial limits of the United States—"imported or brought into the United States." The Congress could not permit the importation of intoxicating liquors fit for beverage purposes in the face of the 18th Amendment. Such statute or Paragraph would be deemed unconstitutional. Ergo, the clause in question does not refer to intoxicating liquors fit and intended for beverage purposes, or if it does, it can only refer to such liquors as are capable of importation in compliance with the National Prohibition Act, and therefore could have no application or force in the case at bar. This contention is further borne out by Paragraph 801 of the same schedule which manifests Congress' purpose and intent that

> "nothing in this schedule shall be construed as limiting or restricting the provisions of the National Prohibition Act."

Paragraph 813 of Schedule 8 cannot afford a basis for the invocation of sections 584 and 594 of the Tariff Act of 1922. If in the case at bar, the liquors which were found aboard the vessel had been duly listed in a manifest, nevertheless these liquors would be forfeit as long as there was

no permit for it, notwithstanding 401, which in defining "merchandise" reads:

> "includes merchandise the importation of which is prohibited"

The manifest then would be accurate, and of course section 584 could not be invoked, nor section 594.

But Section 401 of the Tariff Act of 1922 (19 U. S. C. A. 231) refers specifically to sections 305(a), 305(c), 306(a), 306(b), 306(c), 307, 526(a), 526(b) and 526(c) of the Tariff Act of 1922 (19 U. S. C. A. Sections 135, 136, 137, 138, 139, 140, 141, 142, 143). These sections are headed "Importations Prohibited" and prohibit the importation of obscene books, etc., the importation of neat cattle, and the hides of neat cattle, goods manufactured wholly or in part in any foreign country by convict labor and prohibits under certain circumstances the importation of merchandise bearing trade marks owned by citizen of the United States. There was no necessity for incorporating intoxicating liquors fit for beverage purposes in a customs duties statute as the National Prohibition Act dealt specifically with the subject-matter in every aspect thereof. The definition of "merchandise" appears in section 231, Title 19 U. S. C. A. as follows:

> "(c) *Merchandise.*—The word 'merchandise' means goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited."

The Circuit Court of Appeals in its opinion, through an inadvertence, quotes this section as reading:

> "includes merchandise the importation of which is *forbidden.*" (Italics ours.)

In the presence of the specific legislation in the Tariff Act as to which merchandise is prohibited, it is significant to note that intoxicating liquors for beverage purposes is nowhere therein included. Nor does it include those articles and liquors which are enumerated in Schedule 8, for obviously that schedule refers to merchandise capable of importation. The definition of "merchandise" in the Tariff Act is immaterial in the case at bar and the Circuit Court's reliance thereon is unfounded.

Schedule 8 of the Tariff Act of 1922 is obviously designed for the purpose of the collection of duties on the wine spirits, etc., and articles as therein prescribed and as Paragraphs 802, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 reveal on their very face. The very first paragraph of Schedule 8, to wit, Paragraph 801, makes it clear that

> "Nothing in this schedule shall be construed as in any manner limiting or restricting the provisions of Title 27 (the National Prohibition Act, as amended)."

Paragraph 813 of Schedule 8 makes it necessary in order to import such wines, spirits or other liquors to have a permit issued therefor by the Commissioner of Internal Revenue. It is well settled that a particular section of a statute must be construed from the general view of the whole act of which it forms a part.

> 26 Am. Eng. Enc. Law, 616, 36 Cyc. 1128, 25 R. C. L. Sec. 247;
> *United States* v. *Burr*, 159 U. S. 78, 40 L. Ed. 82, 15 S. Ct. Rep. 1002.

This is a part of the Tariff Act of 1922. As such, obviously it could not recognize the importation of intoxicat-

ing liquors for beverage purposes. The Eighteenth Amendment of course prohibits importation of intoxicating liquors for beverage purposes. Consequently it must refer only to such liquors as may be imported in accordance with the National Prohibition Act for which a permit may be obtained.

As stated in

United States v. *Katz*, 271 U. S. 354, 70 L. Ed. 986, 46 S. Ct. 513.

"Section 3, *Title II*, which prohibits the manufacture, sale and possession of intoxicating liquor, expressly provides that 'liquor for nonbeverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor * * *.' To make the prohibitions of the act effective, and to provide for the production and use of liquor for nonbeverage purposes, it became necessary for the government to regulate and supervise those uses of intoxicating liquor which were not prohibited. Congress had before it the provisions of the Revenue Law (Comp. Stat., Sections 5981 to 6161) governing distillers, rectifiers, and brewers, requiring detailed records of all transactions, and laying down other regulations designed to promote the effective collection of liquor taxes; it also had before it the regulatory system devised by the Internal Revenue Bureau for carrying into effect the prohibitory legislation contained in the Food Control Act of August 10, 1917, chap. 53, 40 Stat. at L. 276, Comp. Stat., Section 3115⅛ e, Fed. Stat. Anno. Supp. 1918, p. 181, and subsequent war legislation. See 21 T. D. 7, No. 2788.

"The business affected by this legislation was lawful business, subject to governmental regulation;

records of transactions were required to be kept, as a condition of receiving governmental permission to operate, and such records were a convenient and necessary means for protecting the interests of the government with respect to its revenues. When Congress came to enact the National Prohibition Act, a similar method of permit or license and a similar system of records afforded a convenient means for the regulation and control of those dealing with alcoholic liquors for the nonbeverage purposes as authorized by the statute.

"The reports of the Committees of the Senate and House having the bill in charge, as well as the statute as adopted, indicate clearly that the purpose of Congress was to take over an established and well known system of granting permits and requiring reports and records, for the purpose of regulating and controlling such portion of the liquor traffic as had not been prohibited by the 18th Amendment and the National Prohibition Act."

A permit for the importation of intoxicating liquors for beverage purposes as in the case at bar could not issue. It would seem therefore that Schedule 8 of the Tariff Act of 1922 can affect only such liquors as may be legally imported into the United States, as for medicinal purposes or sacramental purposes or such liquors as are not fit for beverage purposes as culinary sources.

It seems that the further difficulty with the Circuit Court's opinion is that the paragraph in question is limited to a forfeiture of the intoxicating liquors only and is not broad enough in its scope to lend itself as an aid to sections 584 and 594 of the Tariff Act. Perhaps any provision of the Tariff Act would be held applicable to enforce the forfeiture as against the liquor in question, but Paragraph 813 of Schedule 8 which is the basis of the Circuit Court's opinion is being invoked, not only for the purpose

as authorized by that paragraph to forfeit the cargo, but also for the purpose of inflicting a penalty against the vessel. The construction contended for by the petitioner results thus: the master of the vessel on which intoxicating liquors is being imported and actually within the territorial limits of the United States is amenable to prosecution under the National Prohibition Act; the vehicle, subject to seizure under section 26 of the National Prohibition Act; the cargo, forfeitable by virtue of Paragraph 813 of Schedule 8.

The Circuit Court of Appeals further erred in attempting to make a distinction between the statutes in question by calling the Tariff Act statute a penalty statute as opposed to section 26 being a forfeiture statute. At the outset, such distinction between the statutes is not helpful and it creates a distinction without an essential difference. Strictly speaking, section 26 of the National Prohibition Act is not a forfeiture statute. Section 26 does not declare forfeit the res although all the proceedings under it are directed to that end.

Richbourg Motor Co. v. *United States, supra.*

A successful prosecution in the criminal cause for a violation of the National Prohibition Act, resulting in the conviction of the transporter of the intoxicating liquors sets in motion the procedure under section 26. The vehicle is ordered sold but the rights of innocent lienors and owners are saved. Only to the extent of guilty interests is the res penalized. Nor is the guilt of the person in charge transferable to the res. In such respect section 26 is a penalty statute in the same sense as the Tariff Act, section 594, with the obvious and vital difference that innocence provides a defense.

It would seem therefore, that the reasons advanced in the opinion of the Circuit Court of Appeals are not any too convincing. As opposed to its reasons, even if construed forceful, the opinion of the United States Supreme Court in *Richbourg* case is a sufficient answer, for the Circuit Court of Appeals recognizes the presence of all the ingredients necessary for a proceeding under section 26, but nevertheless concludes that the Tariff Act sections in question may be invoked by virtue of the fact that they happen to be applicable and passed later in time than section 26. It is strongly urged that the statutes in question require a strict construction to the end in view that a forfeiture may not incur in the presence of innocence. A penalty statute must also receive a strict construction. Strictly construed, the Tariff Act section in question may not be invoked, for the Paragraph relied upon concerns itself to the limited extent only of the forfeiture of the merchandise and not the vehicle.

The Circuit Court of Appeals for the Second Circuit as early as January, 1925, in the case of

United States v. *One Mack Auto Truck*, 4 Fed. (2d) 923

seemed to arrive at a conclusion irreconcilable with the conclusion in the case at bar. In that case Revised Statutes section 3062 was involved. That section is a customs statute and is ancillary to Revised Statutes section 3062, which is substantially the same as section 584 of the Tariff Act of 1922 and is found in the same body of law. The Court, Judge Learned Hand writing the opinion, stated as follows:

"The argument, adapted from U. S. v. Yuginovich, supra, is that, when Congress passed section

26, title 2, of the National Prohibition Act (Comp. St. Ann. Supp. 1923, Sec. 10138½mm), it provided milder penalties for unlawfully transporting liquors than Rev. St. Section 3062, which forfeits the vehicle regardless of the owner's complicity, and without relief to innocent lienors, as does also Rev. St. Section 3450 (Comp. St. Sec. 6352). Goldsmith v. U. S., 254 U. S. 505, 41 S. Ct. 189, 63 L. Ed. 376. It is true that the section was ancillary to the collection of customs, as were Rev. St. Secs. 2809 and 2872, and that section 26 of the National Prohibition Act cannot therefore be said to be in pari materia. Nevertheless, the same act—i. e., the carriage of unlawfully imported liquors—is within each statute, and, though each comprehends much more, we understand that *within the area of their overlap the later and more lenient provision prevails.* So the Circuit Courts of Appeal for the Sixth and Ninth Circuits thought, and so we think." (Italics ours.)

The weight of authority is in accord with the District Court's opinion in the case at bar. Various District Courts and two Circuit Courts have, without citing it, come to the same conclusion for identical reasons.

United States v. *Ford Coupe Automobile,* 43 (2d) 212;

United States v. *One Studebaker Automobile,* 45 Fed. (2d) 430;

Colon v. *Hanlon,* 50 Fed. (2d) 353;

Corriveau v. *United States,* 53 Fed. (2d) 735.

Furthermore, as stated in

United States v. *Ryan,* 52 S. Ct. 65, 76 L. Ed. 71,

decision by the Supreme Court, Nov. 23, 1931, Adv. Opinions No. 3:

> "But by Section 5 of the Willis-Campbell Act of November 23, 1921, chap. 134, 42 Stat. at L. 222, 223, all penalties for violation of the revenue laws, not directly in conflict with any provision of the National Prohibition Act, are continued in force. See United States v. One Ford Coupe Auto, 272 U. S. 321, 71 L. ed. 279, 47 A. L. R. 1025, 47 S. Ct. 154."

For the foregoing reasons it is respectfully submitted that the decree of the Circuit Court of Appeals reversing the judgment of the District Court dismissing the libel proceedings herein, be reversed.

Respectfully submitted,

LOUIS HALLE,
Attorney for Petitioner.

LOUIS HALLE,
MILTON R. KROOPF,
on the Brief.

Appendix.

Section 26 of the National Prohibition Act:

Unlawful Transportation of Liquor; Seizure and Destruction of Liquor and Sale of Vehicle.—When the commissioner, his assistants, inspectors, or any officer of the law shall discover any person in the act of transporting in violation of the law, intoxicating liquors in any wagon, buggy, automobile, water or air craft, or other vehicle, it shall be his duty to seize any and all intoxicating liquors found therein being transported contrary to law. Whenever intoxicating liquors transported or possessed illegally shall be seized by an officer he shall take possession of the vehicle and team or automobile, boat, air or water craft, or any other conveyance, and shall arrest any person in charge thereof. Such officer shall at once proceed against the person arrested under the provisions of this chapter in any court having competent jurisdiction; but the said vehicle or conveyance shall be returned to the owner upon execution by him of a good and valid bond, with sufficient sureties, in a sum double the value of the property, which said bond shall be approved by said officer and shall be conditioned to return said property to the custody of said officer on the day of trial to abide the judgment of the court. The court upon conviction of the person so arrested shall order the liquor destroyed, and unless good cause to the contrary is shown by the owner, shall order a sale by public auction of the property seized, and the officer making the sale, after deducting the expense of keeping the property, the fee for the seizure, and the cost of the sale, shall pay all liens, according to their priorities, which are established, by intervention or otherwise at said hearing or in other proceeding brought for said purpose, as being bona fide and as having been created

without the lienor having any notice that the carrying vehicle was being used or was to be used for illegal transportation of liquor, and shall pay the balance of the proceeds into the Treasury of the United States as miscellaneous receipts. All liens against property sold under the provisions of this section shall be transferred from the property to the proceeds of the sale of the property. If, however, no one shall be found claiming the team, vehicle, water or air craft, or automobile, the taking of the same, with a description thereof, shall be advertised in some newspaper published in the city or county where taken or if there be no newspaper published in such city or county, in a newspaper having circulation in the county, once a week for two weeks and by handbills posted in three public places near the place of seizure, and if no claimant shall appear within ten days after the last publication of the advertisement, the property shall be sold and the proceeds after deducting the expenses and costs shall be paid into the Treasury of the United States as miscellaneous receipts. (Oct. 28, 1919, c. 85, Title II, Sec. 26, 41 Stat. 315.)

Section 431 of the Tariff Act of 1922:

"**Manifests, Form and Contents.**—The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:

First. The names of the ports at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port. The master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dye-

woods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo "for orders," and within fifteen days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.

Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the master of such vessel.

Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag.

Fourth. The name of the persons to whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state.

Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.

Sixth. An account of the sea stores and ship's stores on board of the vessel. (Sept. 21, 1922, c. 356, Title IV, Sec. 431, 42 Stat. 950.)

Section 581 of the Tariff Act of 1922:

Boarding Vessels or Vehicles; Seizure of Vessel or Merchandise.—Officers of the customs or of the Coast Guard, and agents or other persons authorized by the Secretary of the Treasury, or appointed for that purpose in writing by a collector may at any time go on board of any vessel or vehicle at any place in the United States or within four leagues of the coast of the United States, without as well as within their respective districts, to examine the manifest and to inspect, search, and examine the vessel or vehicle, and every part thereof, and any person, trunk, or package on board, and to this end to hail and stop such vessel or vehicle, if under way, and use all necessary force to compel compliance, and if it shall appear that any breach or violation of the laws of the United States has been committed, whereby or in consequence of which such vessel or vehicle, or the merchandise, or any part thereof, on board of or imported by such vessel or vehicle is liable to forfeiture, it shall be the duty of such officer to make seizure of the same, and to arrest, or, in case of escape or attempted escape, to pursue and arrest any person engaged in such breach or violation. (R. S. sec. 3061; Sept. 21, 1922, c. 356, Title IV, sec. 581, 42 Stat. 979.)

Section 583 of the Tariff Act of 1922:

Production and Certification of Manifest.—The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on the back of the original manifest to the inspection thereof and return the same to the master or other person in charge. (Sept. 21, 1922, c. 356, Title IV, sec. 583, 42 Stat. 979.)

Section 584 of the Tariff Act of 1922:

Failure to Produce Manifest; Penalty; Merchandise not Included in Manifest; Penalty and Forfeiture; Opium for Smoking; Penalty.—Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500, and if any merchandise, including sea stores, is found on board of or after unlading from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle shall be liable to a penalty equal to the value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge shall be subject to a penalty of $500. If the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred.

If any of such merchandise so found consists of smoking opium or opium prepared for smoking, the master of such vessel or the person in charge of such vehicle shall be liable to a penalty of $25 for each ounce thereof so found. Such penalty shall constitute a lien upon such vessel which may be enforced by a libel in rem. Clearance of any such vessel may be withheld until such penalty is paid or until a bond, satisfactory to the collector, is given

for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. (Sept. 21, 1922, c. 356, Title IV, sec. 584, 42 Stat. 980.)

Section 594 of the Tariff Act of 1922:

Seizure or Forfeiture of Vessels or Vehicles.—Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs—revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same. No vessel or vehicle used by any person as a common carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto. (Sept. 21, 1922, c. 356, Title IV, sec. 594, 42 Stat. 982.)

Paragraph 801 of Schedule 8 of the Tariff Act of 1922:

Nothing in this schedule shall be construed as in any manner limiting or restricting the provisions of Title 27 (the National Prohibition Act, as amended).

The duties prescribed in Schedule 8 and imposed by sub-title I shall be in addition to the internal-revenue taxes imposed under existing law, or any subsequent Act.

Paragraph 813 of Schedule 8 of the Tariff Act of 1922:

> No wines, spirits, or other liquors or articles provided for in this schedule containing one-half of one percentum or more of alcohol shall be imported or permitted entry except on a permit issued therefor by the Commissioner of Internal Revenue, and any such wines, spirits, or other liquors or articles imported or brought into the United States without a permit shall be seized and forfeited in the same manner as for other violations of the customs laws.